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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,373	09/12/2005	Joan Schnieber	02280.003420.	4712
5514 7590 07/06/2009 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,373

Applicant(s)

SCHNIEBER ET AL.

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-12, 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed 3/18/09, applicant amends claim 1 to recite " about 10-30% glycerin". This limitation does not have support in the specification. The specification discloses 10-30%, not about 10-30%.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not teach how to make dry component that is fat based, dairy based, protein based , grain base and mixtures of these. One skilled in the art does not know what ingredients to use , how much to use. The specification only teaches dry component to be a dough layer.

Claims 1,6 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite because the processing steps are unclear. Step B recite forming at least one outer dough layer by the substeps a and b; however, it is unclear how the outer dough layer is related to substep (b) because the step does not state that

the outer dough layer is formed. Instead, the step recites forming "an edible layered component" which is not the outer dough layer. It is not known how the outer dough layer is connected to the edible layered component. Step (d) is vague and indefinite because it is unclear how the outer dough layer is formed. The Markush group is unclear because it is not known if the dry component is selected to form the dough layer as recited or additional dough layer is selected from the group recited.

Claim 6 is vague and indefinite as stated in the previous office action. In the response filed 3/18/09, applicant argues that the dry component alone is not the outer dough layer. It is not clear from the recitation of claim 1 the make-up of the outer dough layer. But, the dry component is the main ingredient making up a dough because the hydrating liquid does not form a dough. Furthermore, it is still not clear what is constituted by "based"; applicant argues that it means anything greater than 50%. But, this is not defined in the specification. The specification does not disclose any other dry component other than ingredients making up a dough.

Claim 15 is vague and indefinite because it recites "snack obtainable by a method according to claim 1". However, it is not clear if the edible snack of claim 15 is the same as the edible snack of claim 1. For instance, claim 1 does not recite the core as in claim 1 and does not recite an outer dough comprising the components as in claim 15.

Claims 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lanner et al (5433961)

Lanner et al disclose a process for continuously preparing edible cores with a dough coating thereon. The edible cores are coated by repeatedly tumbling through

both wet zones and dry zone within a tumbling bed. The process comprises the steps of spraying the surface of the tumbling bed with a hydrating liquid and by dusting the surface of the bed with farinaceous powder. The liquid and powder are applied at rates which are suitable to form on the cores a dough-coating comprising starch, flour and sugar. In the spraying step, the edible cores in the tumbling bed rotate repeated hydrated with a hydrating liquid, which can be 100% water. Other materials such as corn syrup, honey, high fructose corn syrup, seasoning, salt, modified pregelatinized starch, gums, flavoring, maltodextrin, oil/shortening, coloring and dairy products etc.. can be added. Farinaceous dough means material comprising flour and water that when cooked is expandable into a crisp material. The farinaceous powder comprises 20-100% flour and 0-50%, pregelatinized modified waxy starch. Suitable flours include nut flour, wheat, rice, oats or mixtures thereof. The farinaceous can also contain seasoning, flavoring, leavening agents, sugar or other fine particulates that can adhere to the edible cores. After emerging from the tumbling bed, the dough coated-edible cores are then cooked until crisp. The cooking can involve conventional baking, microwaving or frying. Preferably, the cooking involves a continuous baking operation at 220-400 degree F for 10-60 minutes. Optionally, the coated edible cores can be further treated or coated with salt, oil, starch and/or gum solutions, sugar, seasoning, flavorants etc.. Suitable cores include peanuts, seeds, beans, fruits, meats, cereals etc.. The coating represents from about 15-70% by weight of the coated edible. The examples show the dough coating contains less than 50% sugar.(see col. 2 lines 21-38,

col. 3 line 59 through col. 4 line 66, col. 5 line 60 through col. 6 line 65, col. 7 lines 1-58 and the examples.)

The reference discloses the snack as claimed. How the snack is obtained is a difference in processing which does not determine the patentability of the product. The coating with liquid base comprising about 10-30% glycerin and about 5-25% corn syrup is a difference in processing. The snack product as claimed does not comprise a liquid base. Also, as explained in the 112 rejection, there is no connection between the product and the process.

Claims 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Werner et al (4663175).

Werner et al disclose a method for making a flavored nut product. The method comprises the steps of coating a liquid mixture containing water, sugar and tapioca onto the nuts, adding a solids mixture containing flour, oil, modified corn starch, sugar and salt and flavoring onto the liquid coated nuts, drying the solids coated nuts and then cooking the coated nuts. The steps of coating with liquid, coating with solid and drying are then repeated until the desired thickness of coating is obtained. Other products such as corn, raisins, berries or other centers can also be coated. The solid mixture comprises 58% flour and 27% sugar. (see columns 2-3)

Since the snack product is the same as in claim 15, it is inherent the product will have the same microbial stability as claimed. The reference discloses the snack as claimed. How the snack is obtained is a difference in processing which does not determine the patentability of the product. The coating with liquid base comprising

about 10-30% glycerin and about 5-25% corn syrup is a difference in processing. The snack product as claimed does not comprise a liquid base. Also, as explained in the 112 rejection, there is no connection between the product and the process.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanner et al.

Lanner et al do not snack having dough layer containing enzyme emulsifier, yeast, and preservative as in claim 17.

Lanner et al disclose an outer dough layer; ingredients such as emulsifier and enzyme are known in the art to add to dough product to improve processing and organoleptic properties. It would have obvious to add known additives for their art-recognized functions. It would also have been obvious to add yeast to the outer dough layer depending on the type of dough and the flavor desired. It would have been obvious to add preservative to enhance the shelf life of the product; preservative is well known in the art for such function.

Claims 1-12 and 14 are free of prior art because there is no suggestion in Lanner or Werner et al to add glycerin in the amount claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 2, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794